APPEAL NO. 93118

On January 14, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). The hearing officer determined that on (date of injury), the respondent (claimant herein) injured her left knee in the course and scope of her employment with her employer, (employer herein), and that the employer had actual knowledge of the claimant's injury and its work-related nature not later than the 30th day after the injury occurred. The employer contends that the evidence is insufficient to support the hearing officer's determinations that the claimant sustained an injury in the course and scope of her employment and that the claimant timely reported the injury to her employer. The employer requests that we reverse the hearing officer's decision and render a decision in favor of the employer. No response to the employer's request for review was filed.

DECISION

The decision of the hearing officer is affirmed.

The employer is a self-insured political subdivision of the State of Texas. The parties agreed at the hearing that the issues to be resolved by the hearing officer were whether the claimant sustained an injury in the course and scope of her employment on (date of injury), and whether the claimant reported her injury of May 24th to her employer not later than the 30th day after the injury occurred.

The claimant testified that she has worked at the hospital operated by the employer for 21 years and that on Sunday, (date of injury), while working the 11:00 p.m. to 7:00 a.m shift at the hospital as a Patient Care Technician, she injured her left knee when she tripped over tubing in a patient's room. She said her son called into work for her the next day and reported that she had injured her knee at work when she tripped over tubing and that she would not be able to report to work, but she did not know who her son talked to. The claimant said that it was normal procedure for whoever took such a call to report the call to Nursing Administration. The claimant said she went to the emergency room of another hospital which was closer to her home on May 26th. She said that she called her supervisor, Mr H, on May 26th and told her that a doctor had prescribed bed rest and no work, but did not tell her she had a work-related injury. The claimant said that she thought her supervisor was already aware of her work-related injury from the call the claimant's son had made to her work the day after the injury. The claimant testified that eight or 10 days after her injury (which would have been between June 1 and June 3, 1992) when she again called her supervisor and found out that the supervisor was not aware of the work-related nature of her injury, she told her supervisor that she tripped over tubing in a patient's room, that she was in pain, and that her knee was swollen. In a signed, but unsworn written statement, the supervisor stated that on May 25, 1992, the claimant indicated on her time sheet that she had hurt her knees and could not walk; that the claimant had been absent

from work since May 25th; and that the claimant called into work on May 26th and reported that she injured her knees, but that the claimant didn't say "how it was done." The supervisor also stated that the claimant had never reported to her that she sustained an on-the-job injury to her knee.

Medical reports in evidence indicated that the claimant was treated at a hospital emergency room on Tuesday, May 26, 1992 and was diagnosed as having a left knee strain. The onset of her knee pain is reported as having occurred on Sunday or at about 1:00 a.m. on Monday. Although the claimant testified that she told the emergency room doctor that she hurt herself at work, there is no mention of that in the emergency room report. Dr. H, reported that he initially saw the claimant on August 25, 1992; that the claimant complained of left knee pain from an injury sustained at work on May 25, 1992 when she tripped over some tubing; that a June 1992 MRI scan of the left knee revealed a torn medial collateral ligament and evidence of a tear of the posterior horn of the lateral meniscus; and that he recommended arthroscopy and possible arthrotomy of the knee joint. On December 17, 1992, Dr. H reported that he was having difficulty getting approval for the procedures he recommended so he was continuing the claimant on conservative care.

The employer introduced into evidence records concerning the claimant's past medical history. These records indicated that in 1978 the claimant had an unspecified work-related accident; that in 1982 she had sore knees from an automobile accident; that in 1983 she had a left ankle injury; that in 1986 she complained of left knee pain and back pain; and that she had also sustained an injury to her forehead and had a rash on her hands on some unspecified dates. None of the medical records concerning the claimant's past medical history indicates that she had, previous to her claimed injury of (date of injury), sustained a torn medial collateral ligament of her left knee or a tear of the posterior horn of the lateral meniscus of her left knee.

The hearing officer found that on (date of injury), the claimant injured her left knee while performing duty as a nurse's aide for the employer when she tripped over life support tubes in a patient's room, and further found that on or about June 1, 1992, the claimant's supervisor, Mr H, knew that the claimant had injured her left knee on (date of injury), and that the claimant was alleging that her knee injury was a work-related injury. The hearing officer concluded that on (date of injury), the claimant injured her left knee in the course and scope of her employment with the employer, and further concluded that the employer was not relieved of liability based on the claimant's alleged failure to notify her employer of her injury in a timely manner because a person eligible to receive notification had actual knowledge of the injury and its work-related nature not later than the 30th day after the injury occurred.

The claimant has the burden of proving that an injury was received in the course and scope of her employment. Spillers v. City of Houston, 777 S.W.2d 181 (Tex. App.-Houston

[1st Dist.] 1989, writ denied). The claimant is an interested witness and her testimony does no more than raise a fact issue for the trier of fact. Nevertheless, the hearing officer had a right to believe the claimant's testimony, and believing it, had a right to find that the claimant sustained an injury to her left knee when she tripped over tubing at work. Highlands Insurance Company v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-Eastland 1980, no writ). The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Article 8308-6.34(e). We do not substitute our judgment for that of the hearing officer where, as here, there is sufficient evidence to support the hearing officer's finding and conclusion that the claimant was injured in the course and scope of her employment, and such finding and conclusion are not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ).

Article 8308-5.01(a) provides that "[a]n employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs." The notice may be given to the employer or any employee of the employer who holds a supervisory or management position. Article 8308-5.01(c). Article 8308-5.02 provides in part that an employee's failure to notify the employer as required under Article 8308-5.01(a) relieves the employer and the employer's insurance carrier of liability unless the employer or a person eligible to receive notification under Article 8308-5.01(c) or the insurance carrier has actual knowledge of the injury. In DeAnda v. Home Insurance Company, 616 S.W.2d 529 (Tex. 1980), the Supreme Court of Texas stated that the purpose of the notice of injury provision is to give the insurer an opportunity immediately to investigate the facts surrounding an injury; that this purpose can be fulfilled without the need of any particular form or manner of notice; and that to fulfill the purpose of the statute, the employer need only know the general nature of the injury and the fact that it is job related. In Associated Employers Insurance Company v. Burris, 321 S.W.2d 112 (Tex. Civ. App.-Amarillo 1959, writ ref'd n.r.e.), the court held that there was sufficient evidence to support a finding of timely notice of injury where the employee swore he told his foreman about his injury on the day it occurred, the foreman swore he didn't, and the trier of fact believed the employee.

In the present case the claimant testified that she told her supervisor eight to 10 days after her accident at work that she injured her knee when she tripped over tubing in a patient's room; however, the supervisor stated in a written statement that the claimant did not report to her that her knee injury was work related. When presented with conflicting evidence, the trier of fact may believe one witness and disbelieve others, and may resolve inconsistencies in the testimony of any witness. McGalliard v. Kuhlmann, 722 S.W.2d 697 (Tex. 1986). We hold that the evidence was sufficient to support the hearing officer's finding that on or about June 1, 1992, the claimant's supervisor knew that the claimant had injured her left knee on (date of injury), and that the claimant was alleging that her knee injury was a work-related injury, and we further hold that such finding is not so against the great weight

and preponderance of the evidence as to be clearly wrong and manifestly unjust. Burris, *supra*. The finding that the supervisor knew on or about June 1, 1992, that the claimant was alleging that her knee injury of (date of injury), was a work-related injury supports the hearing officer's conclusion that the self-insured employer was not relieved of liability for the claimant's injury based on her alleged failure to timely report her injury to the employer. The hearing officer's conclusion concerning the employer's actual knowledge of the claimant's injury was not necessary in light of the hearing officer's finding that the supervisor knew by June 1, 1992, that the claimant was alleging that she injured her knee at work. The June 1st date corresponds to the date the claimant said she told her supervisor that her knee injury was work related and shows timely reporting of the injury to the employer. Thus, there was no need to find that the employer had actual knowledge of the injury under Article 8308-5.02.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge